Judge McMahon

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

METRO FUNDING CORP., SATORI OPPORTUNITY DEBT FUND LP, and C.S. CHARITABLE TRUST, Plaintiffs, vs. WESTLB AG, Defendant.	Civil No. **VERIFIED COMPLAINT**

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CASHIERS

Plaintiff Metro Funding Corp. ("Metro"), by and through its attorneys Wilentz Goldman & Spitzer, and Satori Opportunity Debt Fund LP (the "Satori Fund") and C.S. Charitable Trust, (the "Charitable Trust"), by and through their attorneys Golenbock Eiseman Assor Bell & Peskoe LLP, as and for their complaint against Defendant WestLB AG ("WestLB" and "Defendant"), allege as follows:

NATURE OF THE CASE

1. For nearly three years, Metro has been originating and servicing loans that are funded by WestLB, the Satori Fund, the Charitable Trust and others pursuant to the terms of a Servicing Agreement (subsequently defined) between WestLB and Metro and other related agreements. During this period, Metro has originated a number of loans, for which the amount outstanding remains far less than the value of the properties securing the loans.

2. Despite the fact that WestLB has profited under the agreements it executed with Metro, and despite being in such a solid financial position, [WestLB has recently declared Metro to be in default of the agreements] even though Metro has performed the very actions it contracted to take. Metro has successfully serviced the loans and preserved the collateral securing the loans during an unprecedented collapse in the real estate market. Pursuant to its declaration of default, [WestLB now has prevented Metro access to funds that it uses to pay third party expenses, including but not limited to fees of receivers that have been appointed in foreclosure proceedings, taxes and property insurance due on the collateral, and utilities and other costs necessary to maintain the properties.] Such conduct violates WestLB's obligations under the agreements between Metro and WestLB, and if not stopped, has and will continue to cause irreparable harm to Metro, to third parties who financed a portion of the loans originated and serviced

by Metro including the Satori Fund and the Charitable Trust, to borrowers who continue to own and manage the collateral and need the monetary advances in order to continue to do so, and to the properties themselves, which will significantly depreciate in value due to Metro's inability to maintain and preserve them.

THE PARTIES

3. Metro is a United States corporation charted in the State of New Jersey with its principal place of business in Paramus, New Jersey.

4. Metro is a private commercial real estate lending company specializing in short term asset-based opportunity loans. Metro works with clients needing immediate assistance to take advantage of business opportunities as well as those clients facing foreclosure or bankruptcy. Metro typically issues commitments to its clients within forty-eight hours, and can close loans within two to four weeks.

5. The Satori Opportunity Debt Fund LP is a Delaware limited partnership. The Satori Fund has contributed over $1,400,000 to fund loans that Metro originated.

6. The C.S. Charitable Trust is a New York trust. The Charitable Trust has contributed approximately $875,000 to fund loans that Metro originated.

7. WestLB is a European Commercial Bank with its headquarters located at Herzogstrasse 15, Dusseldorf, Germany. WestLB primarily deals with lending, structured finance, capital market, asset management, transaction services and real estate finance.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that Metro is a citizen of New Jersey, the Satori Fund is a citizen of Delaware, the Charitable Trust is a citizen of New York, WestLB is a citizen of a foreign country, and the amount in controversy exceeds the sum of $75,000 exclusive of interest and costs.

9. This Court has personal jurisdiction over the Defendant by virtue of the fact that WestLB conducts business in New York, New York.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as WestLB is subject to personal jurisdiction in New York, New York, and because the Charitable Trust resides in New York, New York.

METRO AND WESTLB DISCUSS ENTERING INTO A RELATIONSHIP

11. In 2006, FalconBridge Capital Markets, LLC ("FalconBridge"), a registered broker, solicited Metro's interest in obtaining a line of credit to fund future loans.

12. Although it was not necessary for Metro to have a line of credit to support its business endeavors, it agreed to utilize FalconBridge to find a source of institutional financing.

13. FalconBridge ultimately introduced Metro to WestLB, and Metro and WestLB thereafter began the process of negotiating a funding facility.

14. WestLB's research of Metro revealed that Metro was very experienced in the loan industry, and was therefore an attractive borrower.

15. WestLB advised Metro that it had never before entered an agreement such as the proposed business arrangement, as it had never provided a facility to a non-traditional, bridge lender, but assured Metro that it would be flexible to allow both parties to benefit from the relationship.

16. WestLB also informed Metro that it would not interfere with the manner in which Metro serviced its loans, but rather would rely upon Metro's experience and expertise, specifically that of its CEO and President, David Hecht, in making the appropriate servicing and collection decisions.

17. Metro would only agree to form a relationship with WestLB based on WestLB's assurance that Metro would be permitted to make the collection and servicing decisions independently, especially because of WestLB's repeated assertion that it had no experience in bridge financing.

18. Metro also advised WestLB that while it would be providing some of its own funding for each loan, the balance would primarily come from other participants, termed "seniors" and "juniors," including David Hecht, effectively giving Metro a stake in the portfolio.

METRO, WESTLB AND MFC FUNDING, LLC
EXECUTE SEVERAL AGREEMENTS

19. On or about February 28, 2007, Metro, WestLB, and a special purpose entity created for the transaction, MFC Funding, LLC ("MFC"), entered into a number of agreements in which WestLB agreed to fund loans that Metro originated and thereafter serviced.

20. The parties executed the Credit and Security Agreement, dated February 28, 2007 and later agreed to an Amended and Restated Credit and Security Agreement dated July 1, 2008, as further amended on January 13, 2009 (the "Credit Agreement").

21. The parties entered into a Servicing Agreement, dated February 28, 2007, and later agreed to an Amended and Restated Servicing Agreement, dated July 1, 2008 ("Servicing Agreement").

22. The parties executed a Deposit Account Control Agreement, dated February 28, 2007 (also known as the "Lockbox Agreement").

23. The parties entered into a Purchase and Sale Agreement, dated February 28, 2007 (the "Purchase Agreement").

24. Metro also provided WestLB with a copy of its Collection Policy, dated February 6, 2007 (later amended on November 13, 2007) (the "Collection Policy") (collectively, all agreements are hereinafter referred to as the "Transaction Documents").

25. MFC was created solely for the purposes of acquiring and selling Mortgage Loans (as defined in the Credit Agreement), entering into the Credit Agreement and the other Transaction Documents to which it is a party, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing.

26. Pursuant to the Purchase Agreement, MFC purchased Mortgage Loans from Metro.

27. Pursuant to the Credit Agreement, MFC pledged the Mortgage Loans as collateral to WestLB. The loan is the aggregate amount of several advances of principal to MFC.

28. Metro serves as the Servicer of the Mortgage Loans, and pursuant to Section 3.01(a) of the Servicing Agreement, services the Mortgage Loans "in accordance with the Transaction Documents, the Collection Policy and accepted mortgage servicing practices of prudent lending institutions . . . ."

29. Section 3.01(a) of the Servicing Agreement also provides that Metro has "full power and authority, acting alone, to do any and all things in

connection with such servicing and administration which the Servicer may deem necessary or desirable consistent with the terms of this Agreement and each other Transaction Document."

30. In accordance with the Servicing Agreement, mortgagors make payments to Metro pursuant to a loan schedule, with such payments being deposited into a Lockbox Account, which is maintained at Valley National Bank ("Valley").

31. Unless authorized to the contrary, within one business day of any deposit into the Lockbox, pursuant to the Lockbox Agreement, the deposit (less the disclosed share payable to the "senior" participants) is transferred into a Collection Account administered by Wells Fargo Bank ("Wells Fargo"), who serves as Custodian (as defined in the Credit Agreement) of the Collection Account. Wells Fargo then disperses payments to the various parties in accordance with Section 2.3 of the Credit Agreement.

32. The term of the credit facility was three years from the termination of the revolving period, and is to expire in February 2013.

33. During their negotiations, WestLB assured Metro on a number of occasions that the three-year term would be extended.

34. Metro would not have entered into the Transaction Documents without this assurance, because if it was not extended, Metro would then be

required to find replacement funding for what was to become over $40 million in financing that WestLB would ultimately extend.

35. Funding for each of the loans originated by Metro came from the credit facility, with the balance of the loan funded either directly by participants or indirectly through Metro by other participants. On average, WestLB funded approximately 85 to 90 percent of each transaction, but for some loans, WestLB funded as little as 50 percent.

36. Metro ultimately originated over 35 loans that were funded in part through the WestLB credit facility.

37. Currently, there is over $40 million outstanding on the credit facility. The properties securing this facility were initially appraised for over $126 million. Their net worth is now at least $75 million. As a result, WestLB is significantly over collateralized.

38. WestLB agreed that once a loan closed, Metro would take all steps necessary to service and administer loans, including collections, reporting, protection of mortgaged property, liquidations, and foreclosures.

39. As to collections, until recently, WestLB was provided a portion of each monthly payment as its contractual interest payment (approximately $160,000 of the approximately $300,000 collected monthly), Metro would be provided a "Servicing Fee" (approximately $60,000), the back-up

servicer (Wells Fargo) would be provided its fees (approximately $4,750), and the balance would be disbursed, for example, to Metro to pay expenses to maintain the collateral.

40. Metro relies upon a regular payment of the Servicing Fee to support its operations, including expenses such as salaries (approximately $30,000/month), rent ($10,000/month), and others. Metro also paid "junior" participants who provided loans and/or contributions to Metro.

41. Pursuant to the Servicing Agreement, Metro delivers to WestLB, among others, a Monthly Report. The reports set forth all monies that were deposited. In addition, the reports provide detailed information about the current status of each loan, including the term of that loan, whether an extension has been given to the borrower to repay the loan, the final maturity date, whether the loan is current or past due, the balance due, the amount of principal repaid by the borrower, and the total interest deposited each month.

42. WestLB is thereby provided with regular status updates as to each loan it has funded.

ISSUES ARISE BETWEEN METRO AND WESTLB

43. After the market began to collapse in 2008, Metro began working with its borrowers in an effort to maximize the value of the collateral.

44. Metro, at its right and discretion, granted borrowers deferrals of interest payment in exchange for a commitment to continue operating the property and pay the expenses necessary to preserve the property. Metro granted its first interest payment deferral in mid-2008.

45. Because of the market collapse, WestLB was unable to securitize or sell the credit facility assets as it had previously advised Metro was its intent.

46. Metro advised WestLB that there was an opportunity to sell notes from the existing portfolio, and recommended that such action be taken with particular notes, whereby WestLB would receive the full amount it advanced with respect to that loan.

47. WestLB, however, rejected Metro's recommendation, claiming that the sale of notes would somehow hurt its concentration limits.

48. The financial crisis caused WestLB to experience extreme financial and regulatory problems in Germany.

49. In December 2008, WestLB reported to Metro that new bank regulatory capital requirements were in the process of going into effect, and that WestLB was required to be in compliance no later than March 2009.

50. In an e-mail to Metro, WestLB wrote that unless it timely complied with these regulatory requirements, it would be a "very bad outcome" for

WestLB. WestLB further advised Metro that it would then try and shift some of resulting increase in costs to Metro.

51. WestLB rationalized its decision to shift its own costs to Metro by reiterating that it was trying to get the facility rated so that it could be securitized or sold. It insisted that Metro provide information to WestLB so that it could rate the loans.

52. Metro provided the requested information to WestLB so that WestLB could rate the loans.

53. In July 2009, Metro originated a new loan secured by two properties in New Mexico with long term leases to the federal government. On or about July 28, 2009, Metro requested funding for this loan from WestLB.

54. WestLB denied the request on the day the loan was scheduled to close with no prior mention to Metro of any default or discord between the parties.

55. As a result of WestLB's decision, Metro had to scramble to secure financing from an alternate source. Metro used its best efforts to secure alternate financing, which it was ultimately able to do, though it incurred substantial costs to do so. The closing was also delayed.

56. WestLB's decision damaged Metro's reputation as to its ability to timely respond to a qualified borrower's needs, and would serve to dissuade

future borrowers from coming to Metro for financing if they learned that Metro did not and could not fund as promised.

57. In response to Metro's expressed concerns as to WestLB's decision, WestLB for the first time objected to Metro's decision to at times grant interest payment extensions to borrowers.

58. At the time of WestLB's objection, Metro had been granting interest payment extensions almost one year prior to the date the New Mexico transaction was scheduled to close without any objection or issue raised by WestLB, who knew or should have known that these extensions were granted as the information could be readily ascertained from Metro's reports.

59. WestLB provided no explanation as to how it could take this position with Metro when the Transaction Documents allow Metro the discretion to extend payments.

60. When Metro reminded WestLB that it agreed to essentially defer to Metro's good faith decisions on how to service the loans, WestLB essentially blamed its management in Germany for the decision, stating that the New York branch with whom Metro had contracted was no longer making decisions on how to proceed.

61. Much later, WestLB advised Metro that because its management in Germany no longer considered real estate a core asset, it would not

be extending the facility when it was set to expire in February 2013, but rather would immediately wind down the facility. WestLB provided no explanation as to its about face from its previous representation that it would undoubtedly extend the three-year term of the facility.

WESTLB DECLARES METRO AND MFC TO BE IN DEFAULT OF THE TRANSACTION DOCUMENTS

62. On or about August 25, 2009, WestLB sent a notice of default letter to Metro and MFC.

63. Therein, WestLB advised that there had been "several breaches" of the Servicing Agreement, Credit Agreement, and Deposit Account Control Agreement.

64. WestLB alleged that Metro was in default because it "granted interest payment extensions on [nine] Mortgage Loans" and the related issue that Metro had identified loans in which an extension was given as an "Eligible Loan" in its monthly report.

65. Metro has the right and discretion to grant an interest payment extension to a borrower pursuant to Section 3.01(b) of the Servicing Agreement, which expressly states that Metro "may waive, modify or vary any term of any Mortgage Loan or consent to the postponement of strict compliance with any such term or in any manner grant indulgence to any Mortgagor if in [Metro's] good faith determination such waiver, modification, postponement or indulgence is not

materially adverse to the interests of [MFC] or [WestLB] and is consistent with the Collection Policy."

66. In express compliance with the Servicing Agreement, and only in those instances in which Metro in good faith believes that all are better off if the borrower paid a portion of its obligation and commits in the future to pay the balance, Metro exercises its contractual discretion to grant an extension.

67. At the time WestLB declared Metro and MFC to be in default, WestLB knew or should have known that the first extension had been granted more than one year earlier, as Metro consistently reported on a monthly basis the amount of interest and principal deposited into the Collection Account.

68. WestLB did not once notify Metro that it believed Metro had exceeded the scope of the Servicing Agreement by granting an extension until after the market collapsed, after the German regulators began to put pressure on WestLB, after WestLB was unable to securitize or sell the facility, and after WestLB had internally decided to wind down the credit facility.

69. In its August 25, 2009 default letter, WestLB also alleged that MFC had failed to "remit collections and proceeds to the Custodian for deposit in the Collection Account in a timely matter . . . ."

70. MFC has not once failed to timely remit collections and proceeds to the Custodian for deposit in the Collection Account.

71. In another letter dated September 11, 2009, WestLB claimed that an "Early Amortization Event" had occurred. The alleged events that WestLB cited were a "Collateral Deficit" as of September 1, 2009, "Unmatured Events of Default," and "Servicer Termination Events."

72. WestLB's claim was based on the erroneous belief that Metro breached the Transaction Documents when it in good faith granted borrowers extensions.

73. In its letter, WestLB affirmed that "the application of Available Funds shall occur in the manner set forth in Section 2.3 of the Credit Agreement, as applicable following the occurrence of an Early Amortization Event . . . ."

74. As a result, WestLB not only will be paid all accrued and unpaid interest on the loan which it otherwise already receives on a monthly basis, but will seek repayment of a portion of the principal, leaving no funds available to make any other payment.

75. WestLB stated it was giving a "limited waiver, which [it] may revoke at any time in its sole discretion" to allow Metro to be paid its monthly servicing fee.

76. WestLB was effectively taking the position that other than the monthly servicing fee, for which Metro has had to argue with WestLB to receive,

WestLB was not permitting any other monies to be released whether for payment of expenses, advances, or anything else.

77. Metro discussed the issues raised by WestLB in its letters dated August 25, 2009 and September 11, 2009 on numerous occasions, but failed to reach a resolution with WestLB.

78. After the parties failed to resolve the issues, in an undated letter to WestLB, Metro demanded payment of the Servicing Fee after Metro notified WestLB that it complied with all of WestLB's requests.

79. In a letter dated October 16, 2009, Metro communicated to WestLB that it intended to continue working with WestLB in good faith in an attempt to resolve any disputes among the parties. Metro denied all of WestLB's allegations that Metro and MFC had breached the terms of the Transaction Documents and communicated to WestLB its dire need to promptly resolve the disputes between the parties. Metro told WestLB that its decision to deny Metro access to the facility and Collections Account to fund loans, pay advances, and pay expenses was materially limiting its ability to comply with financial, operational and legal obligations in continuing to service the loan portfolio under the facility.

80. Metro reiterated its desire to work in good faith with WestLB to protect what was not only WestLB's interest, but also the interests of Metro and its "junior" and "senior" participants who also funded the loan portfolio.

81. WestLB responded by letter dated October 28, 2009, in which it threatened that unless a revised monthly service report was submitted identifying a "current" loan as being "delinquent," an inaccurate representation of the status of the loan, WestLB would withhold payment of Metro's Servicing Fee.

82. WestLB also began conditioning payment of the Servicing Fee upon the appointment of Trimont Real Estate Advisors, Inc. ("Trimont") as the back-up servicer. WestLB demanded that Trimont be paid a monthly "Back-Up Servicing Fee" and a one-time fee for each property evaluated by Trimont. In total, WestLB threatened that unless Metro agreed to be responsible for approximately $350,000 in costs paid to Trimont, WestLB would terminate the Servicing Agreement.

83. The terms of the Transaction Documents do not permit WestLB to appoint Trimont as the Back-Up Servicer without Metro's consent. WestLB's threats to withhold Metro's Servicing Fee gave Metro no choice but to submit.

84. Trimont is now the Back-Up Servicer. All funds in the Collection Account are inaccessible to Metro. Each month has been an increasing struggle for Metro, as WestLB eventually pays the monthly Servicing Fee, though often payment is delayed and tied to unreasonable conditions. This has caused immeasurable harm to Metro and its ability to service the loans for both WestLB and the other participants who funded those loans.

85. Metro has worked with Trimont to provide it with the information necessary to allow Trimont to evaluate the loan portfolio.

86. Trimont has made inquiries directly to the borrower, including borrowers that are current. The manner in which Trimont is making these inquiries is damaging, as borrowers are led to believe that Metro has financial or other problems.

87. It is commonplace in the industry involved here that when a lender is rumored to be in jeopardy, a borrower may choose to leverage what it perceives as a position of weakness in an effort to achieve more favorable payment terms.

88. On January 22, 2010, WestLB sent yet another default letter to Metro, reiterating the same allegations and additionally claiming that an "insurance issue" exists on a loan with Logic Suites.

89. The January 22, 2010 letter is inaccurate – the property is under construction and has proper builder's risk insurance.

90. WestLB again threatened to withhold Metro's Servicing Fee, an action which, if taken, would lead to Metro's demise.

91. On February 2, 2010, representatives of WestLB asked that representatives of Metro meet on February 9 to discuss the facility.

92. The meeting occurred on February 9. During the meeting, Metro again inquired whether WestLB would allow expenses to maintain the properties to be paid as they were mounting. WestLB did not directly respond to this inquiry, even though Metro expressed that the matter was urgent. During the meeting, the parties also discussed Metro's concern that Trimont could be damaging relationships with borrowers.

93. On February 15, 2010, Trimont advised Metro that it had received an offer to purchase property pledged as additional collateral for a loan with Annie Brown Williams, Inc. ("ABW"). Metro immediately notified WestLB that this was the exact concern that was raised during our February 9th meeting.

94. On February 17, 2010, Anita Griffith, a real estate agent at Griffith Real Estate Agency, Inc. ("Griffith Realty"), e-mailed Metro. Metro had approached Griffith Realty months ago to market the ABW property.

95. Griffith told Metro that the situation with ABW was "not [] good," referring to the fact that Bull Realty, a real estate agency in Atlanta, Georgia (not even in the same State the property was located) had contacted her and said that it had been hired to market the ABW property. Upon information and belief, Trimont had hired Bull Realty.

96. Bull Realty told Griffith that her agency should act as the buyer's agent and put in for a $15,000 commission that would be split between the

two agencies. Griffith told Metro that the commission "sounded high" and that she "couldn't figure out why he [Bull Realty] was handling it in the first place."

WESTLB'S ACTIONS THREATEN THE MAINTENANCE AND PRESERVATION OF THE COLLATERAL

97. Several outstanding loans require funding to maintain and preserve the collateral. These are loans that are in foreclosure or properties which the borrower has abandoned, properties that have been repurchased at foreclosure sales, and loans that are current in which the debtor has requested draws on a line of credit. WestLB has most recently made it known on February 17, 2010 that it will not permit any of these expenses or draws to be paid.

98. The projected expense in the first quarter of 2010 to maintain and preserve the collateral is in excess of $200,000.

99. Unless these expenses are paid, Metro will not be able to maintain and preserve the value of the collateral, as the anticipated expenses of the properties far exceed the income that will be initially generated.

100. Without the funding, Metro and the collateral will be irreparably damaged, for no good reason and certainly no reason that WestLB has ever given.

101. Without the funding, the Satori Fund and the Charitable Trust will be damaged, as the collateral that secures loans that they funded will be irreparably damaged.

IRREPARABLE HARM

102. By refusing to allow Metro to utilize the Collection Account to pay necessary expenses, and threatening to withhold Metro's Servicing Fee WestLB will cause the properties securing Metro's loans to deteriorate immeasurably.

103. Only by paying these expenses can the asset preservation and exit strategy for each loan be implemented, for the benefit of all who have loaned money to the borrower, including but not limited to WestLB, the Satori Fund and the Charitable Trust, as well as Metro and MFC

104. Obtaining reimbursement from paying these expenses is something that Metro is entitled to receive regardless of whether WestLB asserts a claim that Metro is in default. Section 5.2(c) of the Credit Agreement states that MFC "will not use the proceeds of the Loan for any purpose other than to...(3) make required payments of Interest, ***fees, expenses***, indemnities and reimbursements pursuant to the terms of this Agreement and the other Transaction Documents" (emphasis added).

105. By denying Metro access to the Collection Account for fees and expenses related to maintenance and preservation of the collateral, WestLB is in breach of the express terms of the Transaction Documents, and the properties will be irreparably harmed.

FIRST COUNT

(BREACH OF CONTRACT)

106. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if set forth in full herein.

107. The Transaction Documents govern the relationship between Metro, MFC and WestLB.

108. WestLB has breached the terms of the Transaction Documents by engaging in the actions set forth above, including but not limited to:

A. Denying funding for new loans;

B. Failing to timely pay Metro's Servicing Fee;

C. Failing to pay/reimburse Metro for those expenses incurred to maintain the collateral;

D. Failing to fund construction advance(s); and

E. Restricting payment of the waterfall to Metro.

109. Metro, others who financed a portion of the loans (including Plaintiffs the Satori Fund and the Charitable Trust), and borrowers have been and will be irreparably harmed by WestLB's breaches.

110. In addition to irreparable harm, Metro has also suffered damages as a result of WestLB's conduct.

WHEREFORE, plaintiff Metro Funding Corp. prays for the following relief:

A. A temporary and preliminary injunction restraining WestLB, its officers, agents, servants, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them, from:

1. Preventing, hindering or otherwise obstructing Metro [or alternatively, a fiscal agent] and/or the Custodian from disbursing funds from the Collection Account for the purposes of the payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

2. Withholding payment of the Servicing Fee to Metro when due; and

3. Withdrawing or making any disbursements of any monies from the Collection Account, other than the disbursements of the Servicing Fee and disbursements for the purposes of payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

B. An award of compensatory damages, pre-judgment and post-judgment interest.

C. An award of exemplary damages.

D. An award to Plaintiffs of their reasonable attorney's fees and costs of the action.

E. Such other and further relief as the Court may deem just and necessary.

SECOND COUNT

(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

111. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if set forth in full herein.

112. The Transaction Documents contain the implied covenant of good faith and fair dealing.

113. WestLB breached the implied covenant of good faith and fair dealing by engaging in the actions set forth above.

114. Metro, others who financed a portion of the loans (including Plaintiffs the Satori Fund and the Charitable Trust), and borrowers have been and will be irreparably harmed by WestLB's breaches.

115. In addition to irreparable harm, Metro has also suffered damages as a result of WestLB's conduct.

WHEREFORE, plaintiff Metro Funding Corp. prays for the following relief:

A. A temporary and preliminary injunction restraining WestLB, its officers, agents, servants, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them, from:

1. Preventing, hindering or otherwise obstructing Metro [or alternatively, a fiscal agent] and/or the Custodian from disbursing funds from the Collection Account for the purposes of the payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

2. Withholding payment of the Servicing Fee to Metro when due; and

3. Withdrawing or making any disbursements of any monies from the Collection Account, other than the disbursements of the Servicing Fee and disbursements for the purposes of payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

B. An award of compensatory damages, pre-judgment and post-judgment interest.

C. An award of exemplary damages.

D. An award to Plaintiffs of their reasonable attorney's fees and costs of the action.

E. Such other and further relief as the Court may deem just and necessary.

THIRD COUNT

(FRAUDULENT INDUCEMENT)

116. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if set forth in full herein.

117. WestLB knowingly, or with reckless disregard of the truth, represented to Metro that:

A. WestLB would rely on Metro's experience and expertise in making servicing and collection decisions.

B. WestLB would allow Metro to make all servicing and collection decisions.

C. WestLB would not interfere with good faith servicing decisions that Metro made.

D. WestLB would allow Metro to modify or vary a borrower's interest payment obligations.

E. Fees, expenses and other payments to maintain and preserve the Collateral would be promptly made and/or reimbursed.

118. The representations were false.

119. WestLB knew that these representations were false.

120. WestLB intended for Metro to rely upon these representations at the time they were made to induce Metro to agree to the Transaction Documents.

121. Metro was justified in relying upon these representations made by WestLB, and in fact relied upon these representations.

122. Metro, innocent third-party borrowers, and the collateral has been and will be irreparably harmed by WestLB's fraudulent inducement.

123. In addition to irreparable harm, Metro has also suffered damages as a result of WestLB's conduct.

WHEREFORE, plaintiff Metro Funding Corp. prays for the following relief:

A. A temporary and preliminary injunction restraining WestLB, its officers, agents, servants, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them, from:

1. Preventing, hindering or otherwise obstructing Metro [or alternatively, a fiscal agent] and/or the Custodian from disbursing funds from the Collection Account for the purposes of the payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

2. Withholding payment of the Servicing Fee to Metro when due; and

3. Withdrawing or making any disbursements of any monies from the Collection Account, other than the disbursements of the Servicing Fee and disbursements for the purposes of payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

B. An award of compensatory damages, pre-judgment and post-judgment interest.

C. An award of exemplary damages.

D. An award to Plaintiffs of their reasonable attorney's fees and costs of the action.

E. Such other and further relief as the Court may deem just and necessary.

FOURTH COUNT

(IMPAIRMENT OF SECURITY)

124. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if set forth in full herein.

125. In breach of the express terms of the Transaction Documents, WestLB has prevented monies from the Collection Account to be used to pay necessary expenses related to the secured properties, including property taxes, insurance and utilities.

126. As a result of WestLB's actions, the secured properties will be impaired and the value of the secured properties will greatly deteriorate.

127. Metro, the Satori Fund, the Charitable Trust and others have been and will be irreparably harmed by WestLB's actions.

128. In addition to irreparable harm, Metro, the Satori Fund and the Charitable Trust have also suffered damages as a result of WestLB's conduct.

WHEREFORE, plaintiffs Metro, the Satori Fund and the Charitable Trust pray for the following relief:

A. A temporary and preliminary injunction restraining WestLB, its officers, agents, servants, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them, from:

1. Preventing, hindering or otherwise obstructing Metro [or alternatively, a fiscal agent] and/or the Custodian from disbursing funds from the Collection Account for the purposes of the payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

2. Withholding payment of the Servicing Fee to Metro when due; and

3. Withdrawing or making any disbursements of any monies from the Collection Account, other than the disbursements of the Servicing

Fee and disbursements for the purposes of payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

B. An award of compensatory damages, pre-judgment and post-judgment interest.

C. An award of exemplary damages.

D. An award to Plaintiffs of their reasonable attorney's fees and costs of the action.

E. Such other and further relief as the Court may deem just and necessary.

FIFTH COUNT

(TORTIOUS INTERFERENCE)

129. Plaintiffs repeat and reallege the allegations contained in the paragraphs above as if set forth in full herein.

130. The Satori Fund and the Charitable Trust entered into valid participation agreements with Metro (the "Participation Agreements"), pursuant to which they purchased specified percentage shares in certain mortgage loans originated by Metro (the "Participant Loans").

131. Under each Participation Agreement, Satori Fund and the Charitable Trust received a specified percentage interest in all collateral securing

the respective Participant Loan and were entitled to payment, based on the same percentage, of all interest and principal payments made on the mortgage loans.

132. West LB was aware that the "senior" participants were providing funding through these Participation Agreements.

133. West LB has intentionally interfered with the Participation Agreements by preventing Metro from paying the costs and expenses necessary to preserve the value of the collateral securing their collateral.

134. As a result, Satori Fund and the Charitable Trust have been harmed, and are in imminent danger of further harm, from the diminution in the value of the collateral securing their Participant Loans.

WHEREFORE, plaintiffs the Satori Fund and the Charitable Trust pray for the following relief:

A. A temporary and preliminary injunction restraining WestLB, its officers, agents, servants, employees, attorneys, privies, subsidiaries, divisions, successors and assigns, and all persons and organizations in active concert, or participation with any of them, from:

1. Preventing, hindering or otherwise obstructing Metro [or alternatively, a fiscal agent] and/or the Custodian from disbursing funds from the Collection Account for the purposes of the payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

2. Withholding payment of the Servicing Fee to Metro when due; and

3. Withdrawing or making any disbursements of any monies from the Collection Account, other than the disbursements of the Servicing Fee and disbursements for the purposes of payment of fees and expenses to manage, conserve, insure, protect and operate mortgaged properties.

B. An award of compensatory damages, pre-judgment and post-judgment interest.

C. An award of exemplary damages.

D. An award to Plaintiffs of their reasonable attorney's fees and costs of the action.

E. Such other and further relief as the Court may deem just and necessary.

Respectfully submitted,

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By: ______________________
WILLARD C. SHIH

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C.S. Charitable Trust

By: ______________________
DAVID EISEMAN

Dated: February 19, 2010

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

METRO FUNDING CORP., SATORI OPPORTUNITY DEBT FUND LP, and C.S. CHARITABLE TRUST, Plaintiffs, vs. WESTLB AG, Defendant.	Civil No. **VERIFICATION**

I, DAVID HECHT, of full age, under penalty of perjury, declare as follows:

1. I am the Chief Executive Officer and President of Plaintiff Metro Funding Corp.

2. I have read the attached Verified Complaint, I know the contents thereof, and, except for those matters which are stated to be upon

information and belief, I have personal knowledge of the facts set forth therein either directly or as reported to me, and these facts are true and accurate.

DAVID HECHT

Dated: February 19, 2010